

Court file no.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DIANE ZETTEL, CAMERON GRANT AND CHAD HAGEL

Applicants

and

UNIVERSITY OF TORONTO MISSISSAUGA STUDENTS' UNION

Respondent

APPLICATION UNDER section 97 of the Court of Justice Act and rule 14.05 of the Rules of Civil Procedure.

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing, on a date to be fixed by the registrar, at the Superior Court of Justice, 330 University Avenue, Toronto, Ontario, M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date Issued by

Local registrar

Address of
court office: 330 University Avenue
Toronto, ON M5G 1R7

TO University of Toronto Mississauga Students' Union
3359 Mississauga Road, Student Centre Room 100
Mississauga, Ontario L5L 1C6

APPLICATION

The Applicants make application for:

1. A Declaration that the decision of the University of Toronto Mississauga Students' Union (“UTMSU”) to deny the application of UTM Students for Life (“SFL”) for Club recognition (the “Decision”) and the subsequent conduct of UTMSU while SFL attempted to appeal the Decision (the “Conduct”) (i) were contrary to the principles of natural justice and procedural fairness, (ii) were tainted by a closed mind and bias, and (iii) were not made in good faith;
2. A Declaration that UTMSU’s Decision is *ultra vires* by exceeding UTMSU’s jurisdiction and by violating UTMSU’s own policies and rules;
3. A Declaration that UTMSU’s Decision is contrary to fundamental common law values and the values of the *Canadian Charter of Rights and Freedoms*, by failing to respect University of Toronto Mississauga students’ freedom of expression and freedom of association;
4. A Declaration that UTMSU’s Decision is void;
5. An Order prohibiting UTMSU from limiting access to the services, research, information, materials and other resources of UTMSU on account of students’ and student groups’ personal or political beliefs;
6. An Order directing UTMSU to give SFL club recognition;
7. Alternatively, an Order that UTMSU reconsider SFL’s application for club recognition in accordance with natural justice, in good faith, and in accordance with any further directions from this Honourable Court;
8. Costs of this Application; and
9. Such further and other relief as to this court Honourable Court may seem just.

The grounds for the application are:

The Applicants

1. Diane Zettel is a full-time student at the University of Toronto Mississauga currently in her fourth year of the Concurrent Teachers Education Program, majoring in Mathematics and French. Ms. Zettel serves as the President of SFL.
2. Cameron Grant is a full-time student at the University of Toronto Mississauga, currently in his fourth year of a four-year program majoring in Theatre and Drama Studies. Mr. Grant serves as the Treasurer of SFL.
3. Chad Hagel is a full-time student at the University of Toronto Mississauga currently in his third year of an Honours Bachelor of Arts program majoring in History. Mr. Hagel serves as the Secretary of SFL.
4. SFL is a student group established by students at University of Toronto Mississauga who, *inter alia*, encourage discussion on topics important to their belief-system, including respect for the value of human life at all stages. The actions of SFL described in this Application were taken collectively by Ms. Zettel, Mr. Grant and Mr. Hagel.

The Respondent

5. UTMSU was incorporated pursuant to Letters Patent on August 2, 1983, and currently exists under the *Corporations Act*, R.S.O. 1990, c. C.38. UTMSU is a student government organization representing all full-time undergraduate students enrolled in the University of Toronto Mississauga. UTMSU is funded by mandatory fees collected from students by the University of Toronto Mississauga and then transferred to UTMSU.
6. The first purpose of UTMSU as stated in its Letters Patent and quoted in its *Constitution and Bylaws* is “[t]o safeguard the individual rights of the student, regardless of race, colour, creed, sex, nationality, place of origin, or personal or political beliefs”.

7. UTMSU's encourages students, whatever their interest or beliefs, to join or start clubs to represent students who share those interests. Each club must apply for and receive UTMSU recognition every academic year. UTMSU recognition allows student clubs to be approved for room booking and office space privileges, provides rights to apply for annual and event funding, and entitles such clubs to other support and resources from UTMSU.
8. No UTMSU rule, policy or by-law grants UTMSU authority to withhold club recognition based on clubs' political or moral orientation, or the shared beliefs or viewpoints of club members.

The Decision to Reject SFL's Application

9. SFL was given club recognition by UTMSU in August 2014. On June 1, 2015, SFL sent UTMSU the required application for club re-recognition.
10. On July 20, 2015, the UTMSU Clubs Committee, chaired by UTMSU Vice President of Campus Life, Russ Adade, met and approved all the club applications for re-recognition, except for the application of SFL. Members of the Committee claimed to be concerned about the "political nature" of SFL. Francesco Otello-Deluca, UTMSU Vice President Internal, suggested that it was not necessary to give SFL the opportunity to make a presentation to the UTMSU Board of Directors because, as he stated, "[i]f the clubs committee feels that this club does not represent the UTMSU then they will not be a UTMSU recognized club." Mr. Adade moved, and Mr. Otello-Deluca seconded, a motion to discuss SFL's application at a future meeting.
11. At Clubs Committee meetings on August 17 and 19, 2015, there were unrecorded and *in camera* discussions about SFL. SFL was not notified of, or given an opportunity to present at, these meetings. At the August 19 meeting, the Clubs Committee held an *in camera* vote on SFL club recognition. This *in camera* discussion and vote, was agenda item #4. Following this discussion and vote, Club Committee member Abdulla Omari moved, and Mr. Adade sustained, the following motion:

I motion that you rule item 4 of the clubs committee meeting agenda number 3 [sic] out of order, due to the adverse effects it will have on membership of UTMSU. And in clear contrast opposes [sic] to the core documentation policy manual as adopted, and clear implications it will have on our relations with our sister unions, and affiliated organizations to which as an organization we must place highest interest in the institution instead of a single occasion.

12. UTMSU is a member of the Canadian Federation of Students (“CFS”), whose membership includes student unions across Canada. In 2008, the CFS passed a motion encouraging its member student unions not to recognize student clubs with pro-life views.

13. In his report to the Board of Directors dated August 24, 2015, Mr. Adade stated:

Students For Life, which has been recognized by UTMSU in the past, was not recognized for the up-coming school year due to their stance on Abortion, in terms of being Pro-Life and using their platform to tell women what they should do in those situations.

14. The first notice SFL received indicating that UTMSU had any problem with their application for re-recognition was on August 26, 2015, when SFL received an email from Mr. Adade. Mr. Adade informed SFL that he, the chair of the Clubs Committee, had denied their application for club recognition because, he alleged, SFL’s mandate was in direct conflict with the mission statement of UTMSU. No further explanation or details were provided. Mr. Adade indicated that the Decision had been ratified by the UTMSU Board of Directors, but that a request could be made to have the Board re-vote on the application.

15. On September 1, 4, 10 and 21, 2015, SFL emailed Mr. Adade, requesting that he explain to SFL what in their club mandate was in conflict with UTMSU’s mission statement.

16. Mr. Adade did not reply until September 23, 2015, when he stated that SFL’s constitution directly conflicted with UTMSU’s mission statement because “you are telling folks especially women what to do with their bodies.” Mr. Adade continued by explaining that “you folks can’t put them down for making a decision that doesn’t fit with your mandate.” Mr. Adade did not provide any examples of SFL “telling folks, especially women what to do with their bodies” or “put[ting] them down”. Mr.

Adade once again informed SFL that they could request that the Board of Directors re-vote on the Decision.

SFL's Attempts to Appeal the Decision

17. In emails dated September 29 and October 13, 2015, SFL asked UTMSU Vice President Internal, Francesco Otello-DeLuca, to inform them of the date of the next UTMSU Board meeting, so SFL could appeal the Decision.
18. On October 16, 2015, Mr. Otello-DeLuca replied, stating that the next Board meeting would be the week of October 26, 2015, with the specific date and time to be determined. Mr. Otello-DeLuca further stated that he would inform SFL on “whether a board meeting is the right space for an appeal.”
19. On October 19, 2015, counsel for SFL sent a letter to UTMSU’s Board of Directors urging the Board to reverse the Decision.
20. On October 26, 2015, Mr. Adade sent an email to SFL inviting two of their student representatives to attend a meeting of the Clubs Committee, which the UTMSU had designated to hear SFL’s appeal of the Decision.
21. On October 29, 2015, SFL responded, indicating that SFL was willing to meet with the Clubs Committee, but explaining that it maintained its legitimate expectation and right to have the UTMSU Board of Directors decide the appeal of the Decision.

UTMSU's Attempt to Change the Basis for the Decision

22. Contrary to previous communications, in which Mr. Adade had stated that SFL’s denial of club status was based on SFL’s opinion about abortion, on November 3, 2015, Mr. Adade sent SFL an additional email citing technical violations in SFL’s constitution of UTMSU requirements, and stating:

The reasoning behind the decision of the clubs committee to revoke club status for your club is due to the violations and discrepancies we found within your constitution in relation to the clubs handbook and UTMSU operational policy as it pertains to clubs.

23. Mr. Adade's November 3 explanation of the reasoning behind the Decision came as a shock for SFL, because UTMSU had not previously notified SFL that there were any problems with SFL's constitution, which UTMSU had approved in 2014.
24. Nevertheless, SFL acted in good faith to comply with the UTMSU's new directions by correcting these hitherto unobjectionable technical violations in SFL's constitution as requested. On November 5, 2015, SFL members conducted a meeting and passed motions making eight amendments to their constitution. That same day, they forwarded a copy of their amended constitution to Mr. Adade.
25. On November 6, 2015, Ms. Zettel and Mr. Grant met with the UTMSU Clubs Committee. Ms. Zettel and Mr. Grant explained why the Decision violated their rights and UTMSU's own policies. The Clubs Committee did not dispute that the basis of the Decision was SFL's beliefs and viewpoint. However, the Clubs Committee refused to consider Ms. Zettel's and Mr. Grant's presentation on why the Decision was wrong. Instead, the Clubs Committee ordered that SFL elect a fourth (additional) executive member and then have the four SFL executives ratify the amendments previously made to SFL's constitution.
26. SFL agreed to hold another meeting and add a fourth executive and ratify the amendments. SFL also agreed to have a UTMSU representative present at the SFL meeting, as requested by the Clubs Committee.

Interference with SFL's Election

27. On November 23, 2015, Diane Zettel, Cameron Grant, Chad Hagel and SFL member Marigrace Noronha met to elect Ms. Noronha as the fourth executive member of SFL. Mr. Adade was also present at the meeting. Before the meeting started however, five other individuals entered the meeting room: Salma Fakhry (Associate to UTMSU Vice President University Affairs and Academics), Taman Khalaf, Ariana Serapigia, Hashim Yussuf (Associate to Vice President University Affairs and Academics) and Nyasha Chikowore (collectively the "Non-members"). The

Non-members were not members or supporters of SFL, and had never been involved with SFL previously.

28. SFL had given notice of the November 23 meeting by email to all the club members on its own list. Beyond this list of SFL voting members, the only other person who was informed of the time and location of the November 23 meeting was Mr. Adade. The Non-members indicated that Mr. Adade had invited them to attend the meeting.
29. At the meeting, Mr. Grant nominated Ms. Noronha for Vice President of SFL. This was supported by Ms. Zettel and Mr. Hagel. The vote was taken by secret ballot. Mr. Adade did not vote. Although they were not voting members SFL and did not ask to become members of SFL, Mr. Adade permitted the Non-members to participate in the vote. Mr. Adade and Mr. Grant counted the ballots. The result was that the motion to elect the required fourth executive was defeated by a vote of 5-4.
30. The UTMSU *Clubs Handbook* requires that all campus clubs be “open” to all students, regardless of students’ personal characteristics of race, religion, gender, academic inclination, age, and sexual orientation. The *Clubs Handbook* however, differentiates between “UTMSU members” (consisting of all registered undergraduate full-time and part-time students) and a club’s “voting members”. None of the Non-members were voting members of SFL.

Ignoring SFL’s Communications

31. On November 24, 2015, counsel for SFL sent a letter to the UTMSU Board of Directors, setting out Mr. Adade’s bad faith abuse of process. The letter requested that the Board exercise its responsibility and its authority to stop the violations of SFL’s legal rights and to correct the Decision, and that the Board do so on or before November 30, 2015.
32. As of the date of this Application, the Board has not responded to counsel’s October 19 or November 24 letters.

33. Rather, on December 1, 2015, Mr. Adade sent SFL an email that entirely ignored counsel's November 24 letter. Mr. Adade's email admonished SFL for not having more of its members attend the November 23 meeting. On behalf of the Clubs Committee, Mr. Adade advised SFL that they would have to attempt to elect a fourth executive once again, and go through the very same process that Mr. Adade and the Non-members had thwarted on November 23, 2015.

34. On December 15, 2015, counsel for SFL advised the UTMSU Board of Directors and the UTMSU Executive in an email that, given the abuse of process, bad faith and unresponsiveness described above, SFL had no choice but to commence a court action against UTMSU to defend SFL's legal rights.

35. As of the date of this Application, UTMSU has not responded to the December 15 email.

Legal Basis for the Application

36. UTMSU violated the principles of fundamental justice and procedural fairness as follows:

- i) UTMSU failed to give SFL notice of, or the opportunity to present at, the Clubs Committee meetings concerning SFL's application on July 20, August 17 and August 19;
- ii) UTMSU did not permit SFL the opportunity to present their application to the Board, or appeal to the Board and thereby fulfil the legitimate expectation that UTMSU created (namely, that the Board would re-vote on SFL's application if requested); and
- iii) UTMSU did not provide SFL with adequate reasons to permit SFL to understand and address UTMSU's concerns.

37. UTMSU's Decision and Conduct were marked by a closed mind and bias, as follows:

- i) the Clubs Committee members, including Mr. Adade, expressed intolerance for the personal or political beliefs of SFL members and an unwillingness to let those beliefs be expressed by a club recognized by the UTMSU;
- ii) the Board of Directors designated the Clubs Committee to hear SFL's appeal of the Decision even though it was the Clubs Committee itself that had made the Decision; and

iii) Mr. Adade exercised authority and responsibility over SFL's appeal of the Decision, even though it was Mr. Adade himself who had made and defended the Decision, and despite the fact that his actions and statements demonstrated his personal opposition to SFL's views and his inability to act as a reasonable and unbiased decision maker.

38. UTMSU's Decision and Conduct were marked by bad faith and abuse of process, as follows:

- i) they were based on irrelevant and extraneous considerations, namely the personal and political beliefs of SFL members, with which UTMSU's executives disagreed;
- ii) Mr. Adade delayed in providing SFL the reasoning for the Clubs Committee's Decision until a month after Mr. Adade had already articulated the reasoning for the Decision to the UTMSU's Board of Directors;
- iii) the Clubs Committee disingenuously purported to change the reasoning for the Decision, from its disagreement with SFL's personal and political beliefs to alleged flaws in SFL's constitution;
- iv) the Clubs Committee imposed strict compliance on SFL with its requirements when the Clubs Committee had not previously imposed such compliance on SFL or on other clubs; and
- v) The use of chicanery by Mr. Adade in orchestrating the vote against the election of a fourth executive to SFL and allowing the five Non-members to vote in the SFL election.

39. The UTMSU's characterization of SFL's message promoting the sanctity of human life as violating UTMSU's mission statement is arbitrary, illogical and unreasonable. It was also patently unreasonable, and lacking in good faith, for the UTMSU to deny the right of students to exercise their fundamental freedom to express their beliefs and to associate with others who share those beliefs.

40. UTMSU's Decision and Conduct exceed its jurisdiction and are *ultra vires* for the following reasons:

- i) the Decision directly contradicts UTMSU's legal duty to protect students' rights regardless of their personal or political beliefs as set out in UTMSU's Letters Patent, and excludes the Applicants from UTMSU's common framework for student communication and interaction.

- ii) the Decision is based on a non-existent requirement that the UTMSU support the political message of every campus club, and based on the erroneous and unfounded view that individual student clubs somehow “represent the UTMSU”; and
- iii) the continued refusal to reverse the Decision is based on UTMSU’s acceptance of the November 23 vote which violated the rules in UTMSU’s *Clubs’ Handbook* because Mr. Adade permitted the Non-members to vote and because Mr. Adade was biased; and
- iv) UTMSU removed SFL’s club status without providing written warnings as required by UTMSU’s *Clubs’ Handbook*.

41. The UTMSU’s Decision is unreasonable, discriminatory, and fails to respect UTMSU students’ fundamental freedoms of expression and association, which rights are guaranteed at common law and by the *Charter*.

42. In addition to the above grounds, this application is based on such further and other grounds as counsel may advise and as this Honourable Court may allow.

43. The *Corporations Act*, R.S.O. 1990, c. C.38.

44. The *Courts of Justice Act*, R.S.O. 1990, c. C.43.

45. The *Rules of Civil Procedure*, Rule 14.05

46. The *Charter* sections 2(b) and (d).

The following documentary evidence will be used at the hearing of the application:

- 1. Affidavit of Diane Zettel;
- 2. Such further and other material as counsel may advise and this Honourable Court will permit.

Date: _____

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